

GSTD 2013/D4 - Goods and services tax: can you object to a private ruling that the Commissioner makes on the way in which section 105-65 of Schedule 1 to the Taxation Administration Act 1953 applies or would apply to you?

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This document has been finalised by GSTD 2014/1.

 There is a Compendium for this document: **GSTD 2014/1EC** .



Draft Goods and Services Tax Determination

Goods and services tax: can you object to a private ruling that the Commissioner makes on the way in which section 105-65 of Schedule 1 to the *Taxation Administration Act 1953* applies or would apply to you?

❶ This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

You can rely on this publication (excluding appendices) to provide you with protection from interest and penalties in the following way. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. Yes, you can object to a private ruling that the Commissioner makes on the way in which section 105-65 of Schedule 1 to the *Taxation Administration Act 1953* applies or would apply to you, but **only if** the Commissioner has **not** made an assessment of your net amount for the tax period in which you overpaid the GST.

Date of effect

2. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner’s preliminary view has been reached. It does not form part of the proposed binding public ruling.*

3. All legislative references are to Schedule 1 to the *Taxation Administration Act 1953* (TAA) unless otherwise specified.

Background

4. Section 105-65 is a provision which restricts GST refunds. The Commissioner’s views on this provision are set out in MT 2010/1.¹

Section 105-65 does not alter your net amount

5. In *Naidoo*², the Administrative Appeals Tribunal concluded that section 105-65 is not a provision that allows the Commissioner to alter the net amount calculated under subsection 17-5(1) of the GST Act.³ The Tribunal found that section 105-65 operates after the net amount for a tax period is calculated under the GST Act.

6. Having concluded that section 105-65 does not alter the determination of a taxpayer’s net amount under the GST Act, and noting that section 105-65 does not contain any express provision allowing a taxpayer to object to a decision under that provision, the Tribunal found that it did not have jurisdiction to review the Commissioner’s decision under section 105-65 to not give a refund of the overpaid GST.

7. The Tribunal noted that the taxpayer’s review rights are limited to judicial review in proceedings brought in the Federal Court under section 39B of the *Judiciary Act 1903* or under the *Administrative Decisions (Judicial Review) Act 1977*.

The Commissioner can make a ruling on section 105-65

8. The Commissioner may, on application, make a private ruling on the way in which he considers a relevant provision applies or would apply to you in relation to a specified scheme.⁴ A relevant provision includes a provision that is about indirect tax or the administration or the collection of an indirect tax.⁵

9. Section 105-65 is a relevant provision because it is about the administration or collection of GST, which is an indirect tax. This means that the Commissioner may make a private ruling on the way in which section 105-65 applies or would apply to you.

¹ Miscellaneous Taxation Ruling MT 2010/1 *Miscellaneous tax: restrictions on GST refunds under section 105-65 of Schedule 1 to the Taxation Administration Act 1953*. This ruling is currently under review.

² *Naidoo v. Commissioner of Taxation* [2013] AATA 443; 2013 ATC 10-323

³ *A New Tax System (Goods and Services Tax Act) 1999*

⁴ Section 359-5

⁵ Paragraphs 357-55(fb) and 357-55(g)

You can object against a private ruling about section 105-65 if there is no assessment for the period to which the ruling relates

10. You may object to a private ruling that applies to you in the manner set out in Part IVC of the TAA if you are dissatisfied with it.⁶ However you **cannot object** against a private ruling if there is an assessment for you for the accounting period to which the ruling relates.⁷

11. This means that if you are dissatisfied with a private ruling on the way in which section 105-65 applies or would apply to you, you may object to it. However you can only do this if the Commissioner has not made an assessment of your net amount for the tax period to which the ruling relates – being the tax period in which you have overpaid the GST.

12. For tax periods starting on or after 1 July 2012, the Commissioner is treated as having made an assessment of your net amount when you give your GST return to him.⁸ This means that you cannot object against your private ruling about section 105-65 if it relates to a tax period for which you have lodged your GST return. This is because there is an assessment of your net amount for that tax period to which the ruling relates.

13. You may object to a private ruling about section 105-65 if it concerns a future tax period for which you have not given your GST return. However given that section 105-65 is about overpayments of GST, this is unlikely to frequently occur in practice.

14. For tax periods starting before 1 July 2012, the Commissioner did not usually make an assessment of your net amount when you gave your GST return to him. However the Commissioner could make an assessment of your net amount at any time, generally if you requested him to or he did not agree with the net amount in your GST return.⁹

Examples***Example 1 – Pre 1 July 2012 tax periods and no assessment***

15. After lodging his GST returns for the quarterly tax periods 1 July 2010 to 30 June 2011, in which he treated certain supplies as taxable, Arya learns those supplies are, in fact, arrangements which are out of scope. Arya asks the Commissioner to make a ruling on whether section 105-65 applies to restrict his GST refund in relation to those tax periods. The Commissioner makes an unfavourable ruling. If the Commissioner has not made assessments of Arya's net amount for any of those tax periods to which the private ruling relates, Arya may object to his private ruling.

Example 2 – Pre 1 July 2012 tax periods and assessment

16. Lots of Chocolates Pty Ltd treats certain supplies as taxable supplies in its quarterly tax period ending 30 September 2010 and lodges its GST return for that tax period on that basis. In 2011, Lots of Chocolate is audited and the Commissioner makes an assessment reducing its input tax credit claim for that same quarterly tax period.

⁶ Subsection 359-60(1)

⁷ Paragraph 359-60(3)(a)

⁸ Section 155-15

⁹ Paragraphs 105-5(1)(a) and 105-10(1)(a).

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17. In September 2013, a Court rules that supplies, which are the same as the supplies Lots of Chocolates made, are GST-free. After hearing about the Court decision, Lots of Chocolates asks the Commissioner to make a ruling on whether section 105-65 applies to restrict its GST refund in its quarterly tax period ending 30 September 2010. The Commissioner makes an unfavourable ruling.

18. As the Commissioner has made an assessment of Lots of Chocolates' net amount for that tax period, Lots of Chocolates cannot object to its private ruling. Lots of Chocolates also cannot object to its assessments in relation to the Commissioner's decision to not give it a refund of its overpaid GST under section 105-65.

Example 3 – Post 1 July 2012 tax period

19. Good For You Shoes Pty Ltd lodges its monthly GST returns from 1 July 2012 to 30 June 2013, during which it treats certain supplies as taxable. Later Good For You Shoes becomes aware that these supplies should have been GST-free. Good For You Shoes asks the Commissioner to make a ruling on whether the Commissioner would apply section 105-65 to restrict its GST refund in relation to its monthly tax periods 1 July 2012 to 30 June 2013. The Commissioner makes an unfavourable ruling.

20. As the Commissioner is treated as having made assessments of Good For You Shoes' net amount when it lodged its GST returns, Good For You Shoes cannot object to its private ruling in relation to those tax periods. Good For You Shoes also cannot object to its assessments in relation to the Commissioner's decision to not give it a refund of its overpaid GST under section 105-65.

Appendix 2 – Alternative views

❶ *This Appendix sets out alternative views and explains why they are not supported by the Commissioner. It does not form part of the proposed binding public ruling.*

21. Paragraph 359-60(3)(a) states that you cannot object against a private ruling if 'there is an assessment for you for the income year or other accounting period to which the ruling relates.'

22. It could be argued that paragraph 359-60(3)(a) does not restrict your objection rights against a private ruling about how section 105-65 applies or would apply to you because the words 'to which the ruling relates' refers to an assessment of the net amount for the relevant tax period.

23. Under this alternative view, a private ruling about the way in which section 105-65 applies or would apply does not affect the assessment of your net amount for the relevant tax period. Therefore paragraph 359-60(3)(a) does not prevent you objecting to the private ruling.

24. However the Commissioner considers that the words of paragraph 359-60(3)(a) are clear. The provision applies where there is an assessment for the tax period to which the ruling relates. A private ruling about section 105-65 will relate to a tax period in which GST is overpaid, even though the ruling does not concern the assessment of your net amount in any way.

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Appendix 3 – Your comments

25. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

26. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- be published on the ATO website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

Due date:	6 November 2013
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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; MT 2010/1

Subject references:

- GST returns, payments & refunds
- GST objections
- GST private rulings

- TAA 1953 Sch 1 105-65
- TAA 1953 Sch 1 105-5(1)(a)
- TAA 1953 Sch 1 105-10(1)(a)
- TAA 1953 Sch 1 155-15
- TAA 1953 Sch 1 357-55(fb)
- TAA 1953 Sch 1 357-55(g)
- TAA 1953 Sch 1 359-5
- TAA 1953 Sch 1 359-60(1)
- TAA 1953 Sch 1 359-60(3)(a)
- Judiciary Act 1903 39B

Case references:

- *Naidoo v. Commissioner of Taxation*
[2013] AATA 443; 2013 ATC 10-323

Legislative references:

- ADJRA 1977
 - ANTS(GST)A 1999 17-5(1)
-

ATO references

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